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The Honorable MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COSTCO WHOLESALE
CORPORATION, a Washington
corporation,,

Plaintiff,

v.

ROGER HOEN, VERA ING, and
MERRITT LONG, in their official
capacities as members of the Washington
State Liquor Control Board;

Defendants, and

WASHINGTON BEER AND WINE
WHOLESALE ASSOCIATION, a
Washington non-profit corporation,

Intervenor Defendants.

NO. CV04-360P

RESPONSES AND
OBJECTIONS OF
DEFENDANTS TO
PLAINTIFF'S FIRST
DOCUMENT REQUESTS TO
DEFENDANT VERA ING

V. Ing
DEP EXHIBIT 11
CAL. UN. RANTE
NOTARY PUBLIC

4-25-05

Plaintiff Costco Wholesale Corporation makes the following document requests to
Defendant Vera Ing pursuant to Federal Rules of Civil Procedure 26 and 34.

I. INSTRUCTIONS

1. These discovery requests are to be answered separately and fully, in writing and under
oath, within thirty (30) days of the date of service on you.

RESPONSES AND OBJECTIONS OF
DEFENDANTS TO PLAINTIFF'S FIRST
DOCUMENT REQUESTS TO
DEFENDANT VERA ING -- NO. CV04-

1

ATTORNEY GENERAL OF WASHINGTON
Licensing & Administrative Law Division
1125 Washington Street, PO Box 40110
Olympia, WA 98504-0110
(360) 753-2702

ORIGINAL

PLAINTIFF'S
EXHIBIT

CASE
NO. CV04-0360P

EXHIBIT
NO. 231

2. If you object to answering any of these requests, or withhold documents from production in response to these requests, in whole or in part, state your objections or reasons for not responding or producing and state all factual and legal justifications that you believe support your objection or failure to answer or to produce.

3. If any request is deemed to call for privileged documents, and such privilege is asserted so as to avoid production, provide a list with respect to each document so withheld, stating:

- a. Type of document withheld (e.g., letter, memorandum or computer database);
- b. Author(s) of document withheld;
- c. Recipient(s) of document withheld;
- d. Date of document withheld;
- e. Subject matter of document withheld;
- f. Nature of privilege(s) claimed; and
- g. The paragraph(s) of these requests to which the document relates.

4. If you object to answering only part of a request, specify the part to which you object and answer the remainder.

5. Please seasonably and promptly supplement your responses to all of these discovery requests as this action continues, to the full extent required by Federal Rule of Civil Procedure 26(e).

II. DEFINITIONS

As used in these requests, the following terms have the meanings described below:

1. The singular includes the plural and vice versa. The past tense includes the present tense where the clear meaning is not distorted by change of tense.

2. "Person" means any natural person, marital community, partnership, corporation, joint venture, business entity, or government entity.

1 3. "You," "your" or any similar word or phrase includes each individual or entity
2 responding to these discovery requests, including the State of Washington and, where
3 applicable, its Legislature and duly authorized agencies operating or acting on its behalf.

4 4. "Identify," when used with respect to a person, means to state with respect to each such
5 person:

- 6 a. Name;
- 7 b. Last-known residential address;
- 8 c. Occupation, employer and business address at the date of the event or
9 transaction to which the discovery requests refer; and
- 10 d. Present occupation, employer and business address (if different
11 than c.).

12 5. "Identify," when used with respect to a fact or event, means to:

- 13 a. Describe the fact or event with reasonable particularity;
- 14 b. Identify each person believed to have knowledge with respect to the
15 fact or event; and
- 16 c. Identify each document that refers or relates to the fact or event.

17 6. "Identify," when used with respect to a document, means to describe the document with
18 sufficient particularity so as to provide the basis for a motion to compel production pursuant to
19 Federal Rule of Civil Procedure 37. In lieu of identifying a document in this manner, it will be
20 sufficient to produce copies of the document.

21 7. "Identify," when used with respect to a policy or practice, means to describe the policy
22 or practice with reasonable particularity and identify where the policy or practice is stated in
23 official state records.

24 8. "Document" means any kind of handwritten, typewritten, printed, or recorded material
25 whatsoever, including, without limitation, all drafts, copies, data compilations in
26

1 computer-readable form, all foreign language documents, and all translations of foreign
2 language documents.

3 9. "Relating to" or "reflecting" means pertinent, referring, relevant or material to,
4 evidencing, having a bearing on, or concerning, consisting, containing, comprising,
5 embodying, identifying, stating, affecting, discussing, dealing with, considering or otherwise
6 relating in any manner whatsoever to the subject matter of the inquiry.

7 10. "State" means the State of Washington, its Legislature, the WSLCB, and any other state
8 agencies, boards, or departments.

9 11. "WSLCB" means the Washington State Liquor Control Board.

10 12. The "prohibitions and requirements" or "prohibitions or requirements" include the
11 following:

- 12 a. prohibiting licensed retailers from purchasing directly from out-of-state
13 suppliers;
- 14 b. requiring a mark-up of at least 10% by "suppliers" (distributors or
15 wineries or brewers that sell directly to retailers) to retailers;
- 16 c. requiring uniform pricing by suppliers to all retailers regardless of
17 differences in volume, delivery practices, costs, or other factors;
- 18 d. requiring advance posting of prices by suppliers;
- 19 e. prohibiting suppliers from reducing prices during a month;
- 20 f. prohibiting extension of credit to retailers by suppliers; and
- 21 g. prohibiting retailers from taking delivery of wine or beer at a central
22 depot or transferring wine or beer between retail locations.

23 III. GENERAL OBJECTIONS

24 A. The officials of the Liquor Control Board (LCB) object to the First Document
25 Requests to the extent that they require answers from the "State" as defined in Plaintiff's
26 First Document Requests to include any other state agency, board or department and

1 define "you" as including the State of Washington, its Legislature and duly authorized
2 agencies operating or acting on its behalf. Such request is overly broad and unduly
3 burdensome. The responses to these requests for production include the Legislature to
4 the extent the Legislature has enacted statutes directing the state agency, LCB.

5 B. LCB objects to any attempt to expand the scope of persons and entities
6 responsible for responding to these document requests beyond that provided by court
7 rule.

8 C. LCB does not undertake to respond or to supplement its responses to these
9 document requests beyond that required by court rule.

10 D. LCB objects to any and all other attempts by plaintiff to impose conditions or
11 terms regarding these document requests beyond those imposed by court rule.

12 IV. GENERAL RESPONSES

13 If a document is withheld on the grounds of a privilege the withheld documents are
14 identified by description on the log accompanying these responses. Many of the responses call
15 for the production of e-mail documents generated by or received by the LCB and its
16 employees. Those documents were retrieved by use of a special computer program and
17 gathered in the e-mail box of John House, the LCB employee assisting with this document
18 request. Thus, any e-mail produced appears at first glance to have come from John House,
19 when the actual recipient of the e-mail appears below the line identifying the e-mail as having
20 come from John House.

21 Any document that is redacted in part is clearly identified having been redacted. In
22 some instances highlighting on the original did not copy well, suggesting an attempt to redact,
23 when the marking is actually a copy of previous highlighting. In the event the plaintiffs are
24 unable to discern the contents of any of the copies containing highlighter marks, the LCB will
25 provide the plaintiffs with the opportunity to view the originals of any such documents upon
26 the plaintiff's request.

1 The agency rulemaking files dating back to 1934 and the annual reports which are
2 among the documents responsive to these requests are too voluminous to copy and the
3 plaintiffs will be provided with the opportunity to review any responsive rule making files
4 (absent any privileged materials contained within the file) and to review the annual reports at
5 the LCB at a mutually convenient time and to request copies of any desired documents at the
6 time of that review.

7 When documents are responsive to multiple requests every effort is made to reference
8 the request where the documents were first produced. Due to the very broad and overlapping
9 nature of many of the requests, however, it is possible that a responsive document or category
10 of documents will have been produced in one place but not referenced in the response to
11 another request to which the document or documents could be deemed responsive. Documents
12 responsive to more than one request are generally copied and produced only one time, although
13 at times duplicates of documents were inadvertently assigned different numbers.

14 **V. REQUESTS FOR PRODUCTION OF DOCUMENTS**

15 **DOCUMENT REQUEST NO. 1:** Produce all documents identified in your responses to
16 Plaintiff's First Interrogatories.

17 **RESPONSE:** See the General Objections, which are incorporated into this
18 response as fully set forth and see the General Objections set forth in the Answers and
19 Objections of Defendants to Plaintiff's First Interrogatories. Without waiving its
20 objection, LCB has previously produced all of the documents identified in the responses
21 to Plaintiff's First Interrogatories, either in response to the Interrogatories or in the form
22 of documents contained in Defendants' Initial Disclosure. To the extent the Answers and
23 Objections of Defendants to Plaintiff's First Interrogatories identified documents that the
24 LCB intended to produce with its Responses to Requests for Production, those documents
25 are provided at this time, in response to specific Requests below.
26

1 **DOCUMENT REQUEST NO. 2:** Produce all documents relating to any of the state policies
2 identified in your responses to Plaintiff's First Interrogatories.

3 **RESPONSE:** See the General Objections, which are incorporated into this
4 response as fully set forth. LCB further objects to the overly broad and unduly
5 burdensome nature of the request. Without waiving any of the foregoing objections, as
6 stated in the Responses to Interrogatories the relevant "policies" adopted by the State are
7 set out in statutes, including chapter 66 RCW, in Administrative Code and in certain
8 LCB statements of strategy, policy or plan, specifically those set out in the Answers and
9 Objections Interrogatories, including but not limited to those set out in Answers to
10 Interrogatories Nos. 1, 2, 3, 4, 5, 7, 8, and 9. Many documents related to these "policies"
11 were already produced in conjunction with the Answers to Interrogatories. Due to the
12 overbroad nature of Request No. 2, many documents can be interpreted to be potentially
13 responsive to Request No. 2, but are more closely responsive to later requests and are
14 identified and produced in response to specific requests below. As noted in the General
15 Responses above, every effort is made to reference documents or categories of documents
16 in response to each potentially applicable request. Documents generally responsive to
17 Request No. 2 include rulemaking files, including but not limited to those associated with
18 the Washington Administrative Code provisions WAC 314-11-085; WAC 314-12-020;
19 WAC 314-12-210-225; WAC 314-13-015; WAC 314-20-090-100; (former) WAC 314-20-
20 104; (former) WAC 314-24-200; WAC 314-24-190 and WAC 314-52-0005(1). As noted in
21 the General Responses above, all of the LCB rulemaking files and its annual reports will
22 be available for examination and copying upon plaintiff's request. Various MIW
23 bulletins dating from the 1930s are also generally responsive to Request No. 2 but are
24 more specifically responsive to Request No. 4 and are produced there. Other specific
25 MIW bulletins are produced in response to those requests below relating to specific
26 topics. The documents produced in response to Request Nos. 9 and 15 below are also

1 generally responsive to Request No. 2. The Retail Services Business Plan is generally
2 responsive and is produced at this time as document numbers 1-28. See also the
3 following attached documents: June 12, 1981 letter LCB to Albertsons, document
4 numbers 29-34; December 31, 1980 LCB memo re violation, document number 35;
5 August 19, 1996 memo to LCB re automated price posting, document numbers 36-37;
6 April 12, 2004 e-mail re price posting, document number 38; January 14, 1991 briefing
7 on price posting, document number 39; Final bill report SSB 6812 (re price posting),
8 document numbers, 40-47; Revised WSLCB business rules re price posting, document
9 numbers 48-51; WSCLB business rules re price posting, document numbers 52-55;
10 February 1996 draft memo to LCB from MIW section re late price postings, document
11 numbers 56-65; April 12, 2004 e-mail from Heidi Whisman re price posting, document
12 number 66; April 8, 1999 letter and FTC press release, document number 67-76; Three
13 tier system review, document numbers 77-80; December 20, 1995 LCB meeting minutes,
14 document numbers 81-82; Minutes from public hearing selling wine and beer at less than
15 cost, document numbers 83-85; November 1997 Brewery Winery handbook, document
16 numbers 86-88; October 1995 Brewery Winery handbook, document numbers 89-92;
17 May 1990 Brewery Winery handbook, document numbers 93-99; minutes of August 14,
18 1985; August 28, 1985; January 15, 1986; July 1, 1986 and August 5, 1986 attached as
19 document numbers 100-110; 21st Amendment Enforcement Act kit, document numbers
20 111-148; August 5, 1992 document "objectives of a premises check", document number
21 149; 1980-1989 Procedures Manual, document numbers 150-177; pages from 2002 LCB
22 Enforcement Desk Manual re Administrative Violation process, document numbers 178-
23 193.

24 **DOCUMENT REQUEST NO. 3:** Produce all documents sufficient to identify each action
25 the State has taken to either reduce or increase the lawful consumption of wine or beer.
26

1 **RESPONSE:** See the General Objections, which are incorporated in this answer
2 as fully set forth. LCB further objects in that it does not believe the state has adopted a
3 policy to reduce the lawful consumption of wine or beer. Without waiving objection see
4 documents provided in response to Interrogatory No. 1, and see rulemaking files. LCB
5 objects also to the term "increase the lawful consumption of wine or beer" as not
6 reasonably calculated to lead to the discovery of admissible evidence, not relevant to the
7 subject matter and argumentative. Without waiving objection, see Response to
8 Interrogatory No. 2, identifying and providing various documents related to the LCBs
9 response to the non-stimulated lawful demand of alcoholic beverages. See also Retail
10 Services Business Plan produced in Request No. 2 above, rulemaking files, Evaluation of
11 the Tacoma Washington Alcohol Impact Area (pages LCB 01000929 to LCB 01001045 in
12 Defendant's Initial Disclosures). And see generally documents produced in response to
13 Request No. 2 above.

14 **DOCUMENT REQUEST NO. 4:** As to each state policy identified in your responses to
15 Plaintiff's First Interrogatories, produce all documents relating to: (a) who was involved in
16 drafting each state policy; (b) when each of the state policies was proposed; (c) who was
17 involved in proposing each of the state policies; (d) when each of the state policies was
18 adopted; and (e) where each of the state policies may be found.

19 **RESPONSE:** See the General Objections, which are incorporated into this
20 response as fully set forth. The LCB further objects to the overly broad and unduly
21 burdensome nature of the request, as the source for the "policies" is chapter 66.28 RCW
22 and it is not possible to identify the specific individuals in the Legislature who may have
23 participated in activity related to chapter 66.28 RCW in the time period from 1935 to the
24 present. LCB further objects to this request to the extent it contemplates production of
25 documents created by or considered by the Legislature from 1935 forward and of
26 documentary legislative history which is not within the possession or control of the LCB.

1 To the extent such documents exist they are equally accessible to plaintiffs. Without
2 waiving objection LCB responds as follows: See LCB History of Boards and Directors,
3 attached as document numbers 194-195; Manufactures, Importers and Wholesalers
4 (MIW) Bulletins and Letters 1935-2004, attached as document numbers 196-267; memo
5 dated June 27, 1944, to beer and wine wholesalers documents number 268. See generally
6 documents produced in response to Request No. 2 above and see generally rulemaking
7 files and annual reports which will be made available for viewing and copying upon
8 request.

9 DOCUMENT REQUEST NO. 5: As to each state policy identified in your responses to
10 Plaintiff's First Interrogatories, produce all documents relating to all information considered by
11 the State in adopting each state policy.

12 **RESPONSE:** See the General Objections, which are incorporated into this
13 response as fully set forth. The LCB further objects to the overly broad and unduly
14 burdensome nature of the request for "all documents relating to all information
15 considered by the State." The "policies" at issue were drafted and acted upon by the
16 Legislature in the form of statutes and the LCB does not have possession of or control
17 over the working files of the Legislature and to the extent that documentary legislative
18 history of relevant statutory changes exists at the Legislature and is available, such
19 information equally accessible to plaintiffs. The LCB further objects on the grounds that
20 the request seeks the production of documents protected by the attorney client and/or
21 attorney work product privileges. Without waiving objection, the LCB responds as
22 follows:

23 See Board meeting minutes for August 14, 1985; August 28, 1985; January 15,
24 1986; July 1, 1986 and August 5, 1986, attached in response to Request No. 2 above and
25 see generally documents produced in response to Request No. 2 above. See also
26 rulemaking files, including, but not limited to those relating to former version(s) of WAC

1 314-20-105 and 314-24-200. See also attached documents December 30, 1992 memo,
2 document number 269; December 5, 1992 LCB policy re price posting, document number
3 270; December 21, 1992 LCB "what's up" document numbers 271-273; December 17,
4 1992 memo from WBWWA, document numbers 274-276; December 9, 1992 memo re
5 price posting, document number 277; December 8, 1992 memo re price posting, document
6 numbers 278-284; May 20, 1993 memo re price posting, document numbers 285-286; time
7 required for processing postings, document number 287; March 1, 1993 memo re price
8 posting staff, document number 288; March 1, 1993 price posting update, document
9 numbers 289-290; January 29, 1993 questions re price posting, document numbers 291-
10 293; May 21, 1993 request for electronic price posting, document number 294; December
11 31, 1993 policy re posting, document number 295; April 25, 1996 letter re acquisition
12 cost, document number 296. See generally documents produced in response to Request
13 No. 2, Request No. 4 above and Request No. 10, Request No. 11, Request No. 12, Request
14 No. 15 and Request No. 16 below.

15 **DOCUMENT REQUEST NO. 6:** As to each state policy identified in your responses to
16 Plaintiff's First Interrogatories, produce all documents relating to the State's consideration of:
17 (a) alternative state policies that would be less restrictive of competition; and (b) all other
18 alternative state policies.

19 **RESPONSE:** See the General Objections, which are incorporated into this
20 response as fully set forth. The LCB further objects to the overly broad and unduly
21 burdensome nature of the request for "all other alternative state policies" as this request
22 appears to contemplate documentary material created or considered by the Legislature
23 and documentary legislative history which is not in the possession or control of LCB and,
24 to the extent such materials exist they are equally accessible to plaintiff. The LCB
25 further objects to the use of the term "less restrictive of competition" because it assumes
26 that the state policies restrict competition, it is argumentative, assumes facts not in

1 evidence. Without waiving any of the foregoing objections, see the rulemaking files,
2 which will be made available upon request. See generally documents produced in
3 response to these Requests, including, but not limited to, documents produced or
4 referenced in Responses to Request Nos. 2, 3 and 5 above and to Request No. 11 below.

5 **DOCUMENT REQUEST NO. 7:** Produce all documents relating to how each state policy
6 furthered by the "orderly" distribution of wine and beer is in fact furthered by the "orderly"
7 distribution of wine and beer.

8 **RESPONSE:** See the General Objections, which are incorporated into this
9 response as fully set forth. The LCB further objects to the form of the question as vague
10 and ambiguous, overly broad and unduly burdensome. To the extent the "policies" at
11 issue were drafted and acted upon by the Legislature in the form of statutes, the LCB
12 objects to this request as the LCB does not have possession of or control over the working
13 files of the Legislature. To the extent that documentary legislative history of relevant
14 statutory changes and to the extent documents created by and/or considered by the
15 Legislature in the context of statutory changes exists, such information is equally
16 accessible to plaintiffs. Without waiving any of the foregoing objections, see response to
17 Interrogatory No. 5.

18 **DOCUMENT REQUEST NO. 8:** Produce all documents relating to how "orderly"
19 distribution differs from distribution governed by normal competitive marketplace factors with
20 respect to each state policy furthered by the "orderly" distribution of wine and beer.

21 **RESPONSE:** See the General Objections, which are incorporated into this
22 response as fully set forth. The LCB further objects to the term "distribution governed
23 by normal competitive marketplace factors" as vague and ambiguous as it is impossible
24 to determine what plaintiff may mean by "normal competitive marketplace factors."
25 Without waiving any of the foregoing objections see response to Interrogatory No. 6.
26

1 **DOCUMENT REQUEST NO. 9:** Produce documents sufficient to determine each instance
2 since January 1, 2000, in which you have rejected a price posted by a distributor or supplier.

3 **RESPONSE:** See the General Objections, which are incorporated into this
4 response as fully set forth. Without waiving any of the foregoing objections see attached
5 documents regarding requests for and denials of price posting extensions and exceptions,
6 document numbers 297-620, log of enforcement actions and violation reports, document
7 numbers 621-624. See also documents produced in response to Request No. 15 below.

8 **DOCUMENT REQUEST NO. 10:** Produce all documents relating to all communications
9 with the Intervenor Defendant or its members or their employees relating to Costco's letter to
10 the Attorney General's Office dated August 29, 2003, this litigation, Costco's concerns as
11 reflected in that letter or this litigation, or the proposal that became SB 6737 in the last
12 legislative session.

13 **RESPONSE:** See the General Objections, which are incorporated into this
14 response as fully set forth. The LCB further objects to this request in that it calls for
15 production of documents subject to the work product privilege. Without waiving any of
16 the foregoing objections, see answer and objections to Interrogatory No. 18, and see
17 copies of e-mails, memos, letters, bulletins, meeting minutes, work session summaries,
18 etc. attached as document numbers 625-667, 668-669, 670-703, 704, 705-903, 904-905,
19 906-917, 918-920, 921-923, 924, 925, 926-927, 1814, 1824-1826, 1827. See also documents
20 produced in response to Request No. 11 and Request No. 22, below.

21 **DOCUMENT REQUEST NO. 11:** Produce all documents relating to all communications
22 with Costco, state legislators, state legislative staff, other states, trade associations or any other
23 third party relating to Costco's letter to the Attorney General's Office dated August 29, 2003,
24 this litigation, Costco's concerns as reflected in that letter or this litigation, or the proposal that
25 became SB 6737 in the last legislative session.

1 **RESPONSE:** See the General Objections, which are incorporated into this
2 response as fully set forth. The LCB further objects to the overly broad and unduly
3 burdensome nature of the request for "all documents relating to all communications"
4 with unidentified third parties. In addition, LCB objects to the nature of this request as
5 calling for the production of documents subject to the attorney client and/or work
6 product privilege. Without waiving any of the foregoing objections, copies of e-mails,
7 memos, letters, bulletins, meeting minutes, work session summaries, etc. attached as
8 document numbers 928-930, 931-933, 934-936, 937-938, 939-942, 943-952, 953-985, 986,
9 987-993, 994-997, 998-1000, 1001-1014, 1015-1025, 1026, 1027-1032, 1033-1036, 1037-
10 1045, 1046-1048, 1049-1057, 1058, 1059-1099, 1100-1028, 1132-1166, 1167, 1168-1170,
11 1171-1188, 1189-1206, 1207, 1208-1222, 1223-1231, 1232-1238, 1239-1240, 1241-1244,
12 1245, 1246-1249, 1250-1305, 1306-1330, 1331-1369, 1370-1371, 1372-1374, 1815-1819,
13 1820-1821, 1822, 1823-1824. See also documents produced in response to Request No. 10
14 above.

15 **DOCUMENT REQUEST NO. 12:** Produce all documents relating to the necessity of each of
16 the prohibitions and requirements for the accomplishment of each state policy you contend
17 justifies the prohibition or requirement.

18 **RESPONSE:** See the General Objections, which are incorporated into this
19 response as fully set forth. LCB further objects to the form of the question relating to the
20 "necessity" of each policy "you contend justifies the prohibition or requirement" as
21 argumentative. Additionally LCB objects to the overly broad nature of the request as
22 encompassing documents created by and relied upon by the Legislature at any point in its
23 consideration of chapter 66.28 RCW and which are not documents within the LCB's
24 possession or control and which are equally accessible by plaintiffs. Without waiving any
25 of the foregoing objections, see Response to Interrogatory No. 9. See also rulemaking
26 files referenced above, see the statutes and rules themselves. To the extent any

1 associated documentary legislative history exists and is responsive, it is not produced here
2 as it is not within the LCB's possession or control and is equally accessible to plaintiffs.
3 Again, without waiving objection see attached Final Bill Report of ESB 6737, document
4 number 1375. See also generally documents produced in response to Request No. 2 and
5 Request No. 5 above.

6 **DOCUMENT REQUEST NO. 13:** Produce all documents relating to how it is consistent
7 with each policy identified in your responses to Plaintiff's First Interrogatories that the State
8 may buy wine and beer at prices lower than other Washington retailers, be extended credit
9 before payment is due, warehouse beer and wine, not be required to buy through distributors,
10 and buy beer and wine directly from out-of-state suppliers while all other retailers of beer and
11 wine in Washington are prohibited from doing the same.

12 **RESPONSE:** See the General Objections, which are incorporated into this
13 response as fully set forth. The LCB further objects to the request as not reasonably
14 calculated to lead to the discovery of admissible evidence, not relevant or material to this
15 litigation and argumentative. Without waiving objection see response to Interrogatory
16 No. 10.

17 **DOCUMENT REQUEST NO. 14:** Produce all documents relating to why it is necessary to
18 the accomplishment of each policy identified in your responses to Plaintiff's First
19 Interrogatories for the State to prohibit retailers from purchasing directly from approved out-
20 of-state wineries and brewers but not necessary to prohibit them from purchasing directly from
21 in-state wineries and brewers and not necessary to prohibit consumers from purchasing directly
22 from out-of-state wineries.

23 **RESPONSE:** See the General Objections, which are incorporated into this
24 response as fully set forth. LCB further objects to the form of the question as
25 argumentative. Without waiving objection see response to Interrogatory No. 11. Also
26 without waiving objection, see rulemaking files, including, but not limited to those

1 relating to WAC 314-24-230, 314-24-240, 314-24-250, which will be made available upon
2 request and see generally documents produced in response to Request No. 2 above.

3 **DOCUMENT REQUEST NO. 15:** Produce documents sufficient to determine each instance
4 in which you investigated or took any action against a distributor for conduct that was
5 potentially anticompetitive or detrimental to consumer welfare.

6 **RESPONSE:** See the General Objections, which are incorporated into this
7 response as fully set forth. LCB further objects to the term "potentially anticompetitive
8 or detrimental to consumer welfare" as vague and undefined. Without waiving objection,
9 see Administrative Violation Notices and Reports of Complaint attached as document
10 numbers 1376-1383, 1384-1388; Reports of Complaint, Summaries of Investigation and
11 Dispositions of Case/Penalties, attached as document numbers 1389-1456; Administrative
12 Actions, attached as document numbers 1457-1460; March 30, 1995 enforcement manual
13 re complaint processing, attached as document number 1461; January 27, 1994 letter re
14 prohibition of quantity discount, attached as documents 1462-1463; April 16, 1992
15 disapproval of quantity discount, attached as documents 1464-1465; September 24, 1992
16 letter re price posting, attached as documents 1466-1467; September 2004 documents re
17 direct shipping, attached as document number 1468; March 19, 2002 memo to beer and
18 wine importers, document number 1469; April 25, 2001 e-mail re Edward Int'l,
19 document numbers 1470-1472. See documents 1001-1027 produced in response to
20 Request No. 11 above. See also documents produced in response to Request No. 2 and
21 Request No. 9 above and see documents produced in response to Request No. 22 below.

22 **DOCUMENT REQUEST NO. 16:** As to each state policy identified in your responses to
23 Plaintiff's First Interrogatories, produce all documents reflecting each effort that the State has
24 undertaken to determine, and all information considered by the State that bears on, the degree
25 to which each prohibition or requirement furthers that policy.

1 **RESPONSE:** See the General Objections, which are incorporated into this
2 response as fully set forth. LCB further objects to the form of the request as vague,
3 ambiguous, confusing and overly broad. Without waiving objection see response to
4 Interrogatory No. 12. Again, without waiving objection see "The Three Tier System
5 Review Panel" contained in Defendant's Initial Disclosures pp. LCB 01000171-0100488;
6 1983 OFM study, "The Desirability of Continuing Retail Liquor Sales by State
7 Government" contained in Defendant's Initial Disclosures pp. LCB 01000090-01000098;
8 1990 Chart of Analysis Requested by Former Board Member McGavick, attached as
9 document numbers 1473-1474, and documents related to effectiveness of AIA contained
10 in Defendant's Initial Disclosures LCB pp. 01000896-01001045. See generally
11 rulemaking files, including but not limited to those relating to WAC 314-12-210 through
12 314-12- 225, and see generally documents produced in response to Request for
13 Production No. 2 above.

14 **DOCUMENT REQUEST NO. 17:** As to each state policy identified in your responses to
15 Plaintiff's First Interrogatories, produce all documents reflecting each effort that the State has
16 undertaken to determine whether any state actions or policies, other than the prohibitions and
17 requirements, have either furthered or hampered accomplishment of the policy.

18 **RESPONSE:** See the General Objections, which are incorporated into this
19 response as fully set forth. LCB further objects to the form of the request as vague,
20 ambiguous, confusing and overly broad. Without waiving objection see response to
21 Request No. 16 above.

22 **DOCUMENT REQUEST NO. 18:** Produce all documents relating to the reviews or
23 amendments you contend in the Sixth Affirmative Defense that the State has undertaken.

24 **RESPONSE:** See the General Objections, which are incorporated into this
25 response as fully set forth. See also responses and objections to Interrogatory No. 14.
26 The LCB further objects on the grounds that the documents potentially responsive to this

1 request consist of the legislative history of the RCW, which is contained in the
2 codification of the statute and which is equally accessible to plaintiffs. The LCB further
3 objects to the request to the extent it calls for documentary legislative history or other
4 documents prepared and/or considered by the Legislature, which are not within the
5 possession or control of the LCB and to the extent such materials exist, they are equally
6 accessible to plaintiffs. Without waiving objection see rulemaking files. Also without
7 waiving objection, see documents produced in response to these requests, including but
8 not limited to those documents produced in response to Request No. 2, No. 9. No. 15 and
9 No. 16 above.

10 **DOCUMENT REQUEST NO. 19:** Produce all documents relating to each study or other
11 form of information or analysis considered at any time by the State that relates to whether any
12 of the prohibitions and requirements operates to reduce consumption of alcohol.

13 **RESPONSE:** See the General Objections, which are incorporated into this
14 response as fully set forth. The LCB further objects on the grounds that the request
15 potentially calls for information subject to the work product privilege. Without waiving
16 objection see Retail Liquor Sales Task Force, contained in Defendant's Initial Disclosures
17 pp. LCB 01000489 and 01000875, Harvard School of Public Health January 2004 study
18 "The Marketing of Alcohol to College Students," attached document numbers 1475-1484;
19 NABCA release of draft of Pacific Institute for Research and Evaluation study on impact
20 of state control of sale of alcohol on underage drinking and youth impaired driving
21 deaths, attached as document numbers 1485-1499; 2002 Journal of Studies on Alcohol
22 Environmental Policies to Reduce College Drinking, attached as document numbers
23 1500-1534; Institute of Medicine National Research Council of the National Academies:
24 Reducing Underage Drinking a Collective Response, attached as document numbers
25 1535-1538; National Institute on Alcohol Abuse and Alcoholism, 2002 study, "The Effects
26 of Price on Alcohol Consumption and Alcohol Related Problems", attached as document

1 numbers 1539-1559. See also 21st Amendment Enforcement Act, produced in response to
2 Request No. 2 above, and see documents produced in response to Request No. 5 and No.
3 16 above.

4 **DOCUMENT REQUEST NO. 20:** Produce all documents relating to each study or other
5 form of information in the possession of the State or at any time considered by the State as to
6 the impact on competition or consumers of one or more of the prohibitions and requirements.

7 **RESPONSE:** See the General Objections, which are incorporated into this
8 response as fully set forth. The LCB further objects on the grounds that the request
9 potentially calls for information subject to the work product privilege. Without waiving
10 objection, documents produced in response to Request No. 19 above.

11 **DOCUMENT REQUEST NO. 21:** Produce all documents reflecting all efforts undertaken
12 by the State to supervise, control, or limit the impact on competition or consumers of any of
13 the prohibitions and requirements.

14 **RESPONSE:** See the General Objections, which are incorporated into this
15 response as fully set forth. LCB further objects to the term "limit the impact on
16 competition or consumers" as vague and confusing and the request as overly broad. The
17 LCB further objects on the grounds that the extent the request calls for documentary
18 legislative history or production of other documents prepared and/or considered by the
19 Legislature, which are not within the possession or control of the LCB and to the extent
20 such materials exist, they are equally accessible to plaintiffs. Without waiving objection
21 see response to Interrogatory No. 17. See also rulemaking files, and see documents
22 produced in response to Requests for Production No. 2, No. 5, No. 9, No. 15, and No. 18
23 above.

24 **DOCUMENT REQUEST NO. 22:** Produce all documents relating to each analysis
25 undertaken by the State or any information at any time considered by the State as to conduct by
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1 the Intervenor Defendant or one or more of its members that potentially harmed competition or
2 consumers.

3 **RESPONSE:** See the General Objections, which are incorporated into this
4 response as fully set forth. Without waiving objection, see Response and Objections to
5 Interrogatory No. 18. Also without waiving objection, see MIW bulletins produced in
6 response to Request No. 4 above. See also May 9, 2002 letter re price posting attaching
7 MIW Bulletins, attached at document numbers 1560-1564; April 19, 2002 letter re no
8 credit sales attaching MIW Bulletins, attached at document numbers 1565-1584; June 6,
9 1986 MIW Bulletin, attached as document numbers 1585-1586; November 17, 1936 MIW
10 Bulletin, attached as document number 1586; Zoning Plan, attached as document
11 number 1587; June 1, 2004 memo to Washington Wineries re shipping, attaching MIW
12 Bulletins, attached as document numbers 1582-1599. See also documents produced in
13 response to Request No. 2, No. 5, No. 9, No. 15 and No. 18 above.

14 **DOCUMENT REQUEST NO. 23:** Produce any record of contacts or communications by
15 board members or managers with representatives of the Intervenor Defendant or its members.

16 **RESPONSE:** See the General Objections, which are incorporated into this
17 response as fully set forth. LCB further objects to the overly broad and unduly
18 burdensome nature of this request as it is not limited by time frame or topic. To the
19 extent this request seeks records of contacts of communications by board members or
20 managers with representatives of the Intervenor Defendant or its members on topics
21 other than those related to the issues in this lawsuit, the request is not reasonably
22 calculated to lead to the discovery of admissible evidence. The LCB further objects on
23 the grounds that this request purports to require the production of documents subject to
24 work product privilege. Without waiving objection see Answer and Objections to
25 Interrogatory No. 18. Also without waiving objection see documents produced in
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1 response to Request No. 2, No. 4, No. 10 and No. 11 above and see also documents
2 produced in response to Request No. 22 above.

3 **DOCUMENT REQUEST NO. 24:** Produce all documents relating to each potential new or
4 amended statute or regulation that is presently being informally or formally considered by you
5 or any employee of WSLCB.

6 **RESPONSE:** See the General Objections, which are incorporated into this
7 response as fully set forth. LCB further objects to the vague, undefined nature of this
8 request, and on the grounds that this request as overly broad, unduly burdensome, as
9 potentially calling for the production of attorney client and/or work product privileged
10 documents and as not reasonably calculated to lead to the discovery of admissible
11 evidence.

12 **DOCUMENT REQUEST NO. 25:** Produce all documents relating to each analysis
13 undertaken by the State or any information at any time considered by the State as to
14 desirability or methods of increasing sales of wine or beer produced in Washington.

15 **RESPONSE:** See the General Objections, which are incorporated into this
16 response as fully set forth. LCB further objects to this request as not reasonably
17 calculated to lead to the discovery of admissible evidence. Without waiving objection see
18 response to Interrogatory No. 20. See also Retail Services Business Plan produced in
19 response to Request No. 2 above and see Retail Price Implementation previously
20 produced in response to Interrogatory No. 4.

21 **DOCUMENT REQUEST NO. 26:** Produce all documents relating to each analysis
22 undertaken by the State or any information at any time considered by the State as to increasing
23 sales in WSLCB retail stores.

24 **RESPONSE:** See the General Objections, which are incorporated into this
25 response as fully set forth. LCB further objects to this request as not reasonably
26 calculated to lead to the discovery of admissible evidence. Without waiving objection, see

1 State of Washington Decision Package "Increased Shipping Capacity" attached as
2 document numbers 1600-1607; WSCLB Materials Handling Analysis and
3 Recommendations attached as document numbers 1608-1617. See also Retail Liquor
4 Sales Task Force, contained in Defendant's Initial Disclosures pp. LCB 01000489 and
5 01000875, Retail Services Business Plan produced in response to request No. 2 above.

6 DOCUMENT REQUEST NO. 27: Produce all documents relating to quantity discounts,
7 credit, or other favorable terms accepted by the WSLCB from its suppliers since January 1,
8 2000.

9 RESPONSE: See the General Objections, which are incorporated into this
10 response as fully set forth. Further object as not reasonably calculated to lead to the
11 discovery of admissible evidence.

12 DOCUMENT REQUEST NO. 28: Produce all documents relating to profit margins of
13 distributors generally, or of any specific distributor.

14 RESPONSE: See the General Objections, which are incorporated into this
15 response as fully set forth. Without waiving objection, LCB has no responsive
16 documents.

17 DOCUMENT REQUEST NO. 29: Produce all documents relating to how the State
18 determined that 10% was the appropriate minimum markup to require.

19 RESPONSE: See the General Objections, which are incorporated into this
20 response as fully set forth. Without waiving objection see documents produced in
21 response to Request No. 2, Request No. 3 and Request No. 5 above, including, but not
22 limited to any rulemaking files related to history of the 10% rule, including but not
23 limited to (former) WAC 314-20-105 and (former version of) WAC 314-24-200. To the
24 extent the request requires production any documentary legislative history or documents
25 created and/or considered by the Legislature with respect to the codification of the 10%
26 rule into RCW 66.28.180, and to the extent any such materials exist, the LCB objects to

1 the production of such materials as they are not documents within the possession or
2 control of the LCB and are equally accessible to plaintiffs.

3 **DOCUMENT REQUEST NO. 30:** Produce all documents relating to any scrutiny by you of
4 the system of exclusive distributor territories or the effects of that system on prices, retailers,
5 consumers, or any state policy.

6 **RESPONSE:** See the General Objections, which are incorporated into this
7 response as fully set forth. Further objection to the terms "system of exclusive
8 distributor territories" and to the term "scrutiny" as vague and ambiguous and the LCB
9 objects generally to this request as not reasonably calculated to lead to the discovery of
10 admissible evidence. Without waiving objection see February 23, 1989 informal AG
11 opinion to Senator Smitherman, attached as document numbers 1618-1620.

12 **DOCUMENT REQUEST NO. 31:** Produce all documents relating to any scrutiny by you of
13 the required use of distributors by retailers or the effects of that system on prices, retailers,
14 consumers, or any state policy.

15 **RESPONSE:** See the General Objections, which are incorporated into this
16 response as fully set forth. Further objection to the use of the term "scrutiny" as vague
17 and ambiguous and overly broad. Without waiving objection see 1983 OFM study
18 produced as part of Defendant's initial disclosures, LCB pp. 01000066 through 01000068
19 and see "The Three Tier System Review Panel" contained in Defendant's Initial
20 Disclosures pp. LCB 01000171-0100488.

21 **DOCUMENT REQUEST NO. 32:** Produce all documents reflecting any differences among
22 states in the levels of: (a) lawful consumption of wine or beer; (b) excessive, harmful, or
23 abusive consumption of wine or beer; (c) prices to consumers for wine or beer; (d) prices to
24 retailers for wine or beer; and (e) profitability of wine or beer distributors.

25 **RESPONSE:** See the General Objections, which are incorporated into this
26 response as fully set forth. Without waiving objection see 1995 Price Posting Survey

1 attached as document numbers 1621-1729. See also documents produced or referenced
2 in response to Request No. 19 above.

3 **DOCUMENT REQUEST NO. 33:** Produce documents sufficient to determine each person
4 and company present in the trade room during each one-hour appointment block since January
5 1, 2000, as well as the identity of any WSLCB employee who was present during each such
6 appointment block.

7 **RESPONSE:** See the General Objections, which are incorporated into this
8 response as fully set forth. Without waiving objection, the LCB has no responsive
9 documents due to the move to the web based price posting system in 1997.

10 **DOCUMENT REQUEST NO. 34:** Produce all documents that support or contradict your
11 allegation that "each supplier and each distributor acts independently in setting its own prices."

12 **RESPONSE:** See the General Objections, which are incorporated into this response as
13 fully set forth. LCB further objects to the phrase "each supplier and each distributor
14 acts independently in setting its own prices" as it is not an "allegation" made by the LCB.
15 Without waiving objection, see generally the documents produced in response to these
16 requests which reference the price posting process.

17 **DOCUMENT REQUEST NO. 35:** Produce all documents relating to the genesis, proposal,
18 adoption and retention of the prohibitions and requirements.

19 **RESPONSE:** See the General Objections, which are incorporated into this
20 response as fully set forth. Further object as asked and answered. Without waiving
21 objection see all documents produced and referenced in response to these Requests and
22 see rule making files which will be made available upon request. To the extent this
23 request calls for production of any documentary legislative history of chapter 66.28
24 RCW, or documents created by and/or considered by the Legislature in the context of
25 promulgating or amending RCW 66 in the time period from 1935 to the present, the LCB
26 objects to production of such material, to the extent any exists, as it is material not within

1 the possession or control of the LCB and if it does exist it is equally accessible to
2 plaintiffs.

3 **DOCUMENT REQUEST NO. 36:** Produce all documents relating to the genesis, proposal,
4 and adoption of SB 6737.

5 **RESPONSE:** See the General Objections, which are incorporated into this
6 response as fully set forth. Object to overly broad nature of request and further object to
7 request as calling for documents prepared by and/or considered by the Legislature,
8 which are not within the LCB's possession or control and which are equally accessible to
9 the plaintiff. Further object to the extent calls for documents protected by the work
10 product and/or attorney client privileges. Without waiving objection, see documents
11 produced in response to Request No. 10 and No. 11 above.

12 **DOCUMENT REQUEST NO. 37:** Produce all documents relating to the consideration of
13 private label wine and all communications with third parties regarding the same.

14 **RESPONSE:** See the General Objections, which are incorporated into this
15 response as fully set forth. LCB further objects to this request as not reasonably
16 calculated to lead to the discovery of admissible evidence.

17 **DOCUMENT REQUEST NO. 38:** Produce all documents relating to any harm that is
18 avoided, limited or controlled by any of the prohibitions and requirements.

19 **RESPONSE:** See the General Objections, which are incorporated into this
20 response as fully set forth. LCB further objects to the vague, overly broad and unduly
21 burdensome nature of this request and further objects to the extent this request calls for
22 documents protected under the work product privilege. Without waiving objection see
23 Strategic Overview of the LCB's 2005-2007 Strategic Plan, at page LCB01001057,
24 produced in conjunction with Answers and Objections of Defendants to Plaintiff's First
25 Interrogatories, Retail Liquor Sales Task Force contained in Defendant's Initial
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1 Disclosures at LCB-010000491. See also documents produced or referenced in response
2 to Request No. 2, Request No. 19 and Request No. 32 above.

3 **DOCUMENT REQUEST NO. 39:** Produce all documents relating to the consideration of
4 the impact or potential need for changes in the prohibitions or requirements as a result of: (a)
5 the decision in Miller v. Hedlund, 813 F.2d 1344 (9th Cir. 1987); (b) the decision in Mt.
6 Hood Beverage Co. v. Constellation Brands, 149 Wn.2d 98 (2003); and (c) the lawsuit
7 brought by Costco in the Western District of Washington, captioned Costco Wholesale Corp.
8 v. WSLCB, No. C87-66TB.

9 **RESPONSE:** See the General Objections, which are incorporated into this
10 response as fully set forth. Further object to the request as potentially calling for
11 documents subject to attorney client or work product privilege. Without waiving
12 objection see Board Resolution 250, February 1, 1988, removing the "plus 10%"
13 requirement from retail pricing, as result of Costco v. WSLCB, No. C87-66TB and
14 adoption of emergency rules, attached as document number 1730-1733. See also
15 rulemaking files.

16 **DOCUMENT REQUEST NO. 40:** Please produce all documents you used in responding to
17 these discovery requests.

18 **RESPONSE:** See the General Objections, which are incorporated into this
19 response as fully set forth. Objection, overly broad, unduly burdensome as the response
20 appears to require the LCB to identify and produce each and every document it located,
21 considered and determined not to be responsive to these requests. Further objection in
22 that this response appears to call for documents subject to attorney client and/or work
23 product privileges, as it appears to call for the production of such materials as notes and
24 memos made by LCB staff when responding to these document requests and further
25 appears to call for the production of e-mails, memos and other documents flowing
26 between the LCB and its attorneys in the context of preparing to respond and responding

1 to these document requests. To the extent the documents contemplated by request No. 40
2 are of the type described above, such documents are beyond the scope of this litigation
3 and not reasonably calculated to lead to the discovery of admissible evidence. Without
4 waiving objection, and assuming that this interrogatory is intended to request any
5 miscellaneous documents which are, in some manner responsive to the issues in this case,
6 but which do not precisely respond to requests 1-39, see the following attached
7 documents: Pages from 1991 Enforcement Manual, attached as document numbers
8 1734-1747; May 24, 1993 new page to enforcement manual, attached as document
9 numbers 1748-1750; Graph of MIW related projects and related documents, attached as
10 document numbers 1751-1752 and 1753-1755; Information for E-Commerce Committee,
11 attached as document number 1756, Direct Marketing and Sale of Alcohol over Internet,
12 Presentation by Wendell Lee of Wine Institute, attached as document numbers 1757-
13 1813. See also documents produced in response to Request No. 2 and No. 15 above.
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RULE 26(g) CERTIFICATION

I have read the foregoing answers and objections to these document requests and certify that, to the best of my knowledge, information and belief, formed after a reasonable inquiry, they comply with the requirements of Federal Rule of Civil Procedure 26(g).

Dated this 25 day of January, 2005.

ASSISTANT ATTORNEYS GENERAL

By Martha P. Lantz

Martha P. Lantz, WSBA # 21290

David Hankins, WSBA #19194

Attorneys for Defendants Roger Hoen, Vera Ing, and Merritt Long

VERIFICATION

STATE OF WASHINGTON)

) ss:
COUNTY OF THURSTON)

I have been delegated the authority to review and sign on behalf of the officials of the Liquor Control Board and, pursuant to CR 33, I certify that I have read the foregoing answers to these interrogatories and believe them to be true and correct.

R S R
RANDY REYNOLDS
Liquor Control Board
Interim Director of Licensing & Regulation

SUBSCRIBED AND SWORN to before me this 25 day of January, 2005.

Lisa Ann Reed
(Signature of Notary)



Lisa Ann Reed
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at Mason Canyon.
My Appointment Expires: 6-5-08.

CERTIFICATE OF SERVICE

I certify that on January 24, 2005, I caused to be served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of Responses and Objections of Defendants to Plaintiff's First Document Requests to Defendant Vera Ing.

Party

Method of Service

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☒ US Mail Postage Prepaid 1/25/05 ☐ UPS Next Day Air
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X By E-Mail

Party

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☐ ABC/Legal Messenger ☐ Hand delivered by:

X By E-Mail

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 24th day of January, 2005, at Olympia, Washington.


TANYA SEWALELOT
Legal Assistant